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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------|
| 10/674,953 | 09/29/2003 | Gregory D. Dietz | 1792.001US1 | 5273 |
| 7590 05/23/2005 Lemaire Patent Law Firm, PLLC P. O. Box 11358 St. Paul,, MN 55111 | | | EXAMINER JOHNSON, STEPHEN | |
| | | | ART UNIT 3641 | PAPER NUMBER |

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,953

Applicant(s)

DIETZ, GREGORY D.

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-12 and 14-25 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Applicant's election with traverse of species D (figs. 12, 14, 15, and 16) in the reply filed on 05/06/2005 is acknowledged. The traversal is on the ground(s) that all claims should be considered because the figures and claims are closely related. This is not found persuasive because there are differences in the species that would dictate different search strategies as well as searching for plural species and inventions. Such additional searching would constitute a serious burden.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-5 and 10-25 read on the elected species (species D) and an action on these claims follows. Claims 6-9 are withdrawn from consideration as being directed to non-elected species.

2. Claims 2, 18, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, line 15; in claim 18, line 17; and in claim 23, line 23; use of the phrase "a fourth direction" makes the claim indefinite. Since this direction is not the same direction as the previously claimed fourth direction (see claims 2, 18, and 23), it makes the claim uncertain as to the intended direction. Please clarify.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 4-5, 10, 12, 14, 16-17, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gregory.

Gregory discloses a gun sight comprising:

- | | |
|---|----------------------|
| a) a first sight indicator; | fig. 9 (deer at 100) |
| b) a second sight indicator; | fig. 9 (deer at 300) |
| c) a gun barrel; and | col. 6, lines 57-60 |
| d) a substantially straight visible line. | see fig. 9 |

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory in view of Lyman Jr..

Gregory applies as previously recited. However, undisclosed is a clamping system to threadably clamp a movable clamp portion to a fixed clamp portion. Lyman Jr. teach a clamping system to threadably clamp a movable clamp portion to a fixed clamp portion 13, 16, 20, 23 (page 1, lines 75-82). Applicant is substituting one type of mounting means for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Lyman Jr. to the Gregory gun sight and have a gun sight with a different type of mounting means.

7. Claims 1, 3-5, 10-12, 14-17, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Shepherd.

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Sherperd discloses a gun sight comprising:

- a) a first sight indicator; 93
- b) a second sight indicator; 97
- c) a third sight indicator; 95
- d) a gun barrel; see fig. 1
- e) a substantially straight visible line; see fig. 7
- f) gun sight attachment means; see fig. 1
- g) a fourth sight indicator; 99
- h) a fifth sight indicator; and 101
- i) a second direction. see fig. 7

8. Claims 1, 3-5, 10-12, 14-17, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Wascher et al..

Washer et al. disclose a gun sight comprising:

- a) a first sight indicator; fig. 15B (122, 124);
fig. 15A (120)
- b) a second sight indicator; fig. 15B (122, 124);
fig. 15A (120)
- c) a third sight indicator; fig. 15B (122, 124);
fig. 15A (120)
- d) a fourth sight indicator; fig. 15B (122, 124);
fig. 15A (120)
- e) a fifth sight indicator; fig. 15B (122, 124);

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fig. 15A (120)

f) a gun barrel; and

see figs. 1, 2

g) a substantially straight visible line and second direction. see figs. 15B, 15A

9. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 2, 18, and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Herter et al. and Jones disclose state of the art gun sights.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877.

The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
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SMJ

May 17, 2005